

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11279 OF 2018

Ashok s/o Dilip Gaikwad
Age. 31 years, Occ. Service,
R/o. Sumedh nagar, Tareda (Kd)
Tq. & Dist. Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Education Department,
Mantralaya, Mumbai – 32.

.. Respondents

2. The Secretary,
New Janta Shikshan Prasarak Mandal,
Milind Vastigraha, Near Rajiv Gandhi College,
Naik Nagar, Nanded.

3. The Head Master,
Milind Primary School, Naik Nagar,
Nanded, Dist. Nanded.

4. The Education Officer (Primary)
Zilla Parishad, Nanded,
Dist. Nanded.

Mr.A.N. Nagargoje h/f. Mr. V.S. Panpatte, Advocate for the petitioner.
Mr.K.B. Jadhavar, AGP for the respondent/State.
Mr.R.P. Bhumkar h/f. Mr. D.R. Korde, Advocate for respondent No.2.
Mr.M.B. Sandanshiv, Advocate for respondent No.3.
Mr.N.S. Kadam, Advocate for respondent No.4.

CORAM : KISHORE C. SANT, J.
DATED : 18.08.2023

PC :-

01. By order dated 31.07.2023 this Court has recorded that the petitioner was heard for some time and thereafter the learned Advocate for the petitioner sought time to take instructions and the matter was adjourned to 07.08.2023 under caption 'instructions'.

02. Today, learned Advocate Mr. Nagargoje submits that the matter be heard on merits. He submits that the delay ought to have been condoned by taking liberal approach. He placed reliance on judgment reported in 1998 (7) SCC 123 in the case of N. Balakrishnan Vs. M. Krishnamurthy. He further relies upon judgment reported in 1991(2) Mh.L.J.272 in the case of Sonerao Sadashivrao Patil and Anr Vs. Godawaribai w/o. Laxmansingh Gahirewar & Ors., and judgment reported in 2005(6) Bom.C.R. 424 in the case of Shivaji Shivlingappa Kadge &Ors. Vs. Chief Officer, Municipal Council.

03. The learned Advocate on the strength of these judgments submits that the petitioner has assigned two reasons for delay of 1427 days. First was illness and medical treatment of his father and his grand father, for which he was required most of the time to attend the patients and was required to stay

out of station. Second reason assigned is that the management kept on assuring him of reinstatement. It is submission that since it is case of otherwise termination and no specific order was passed, the petitioner had no option but to rely on the assurances given by the management and for this reason he did not feel it proper to approach the School Tribunal immediately because of the hopes given by the management. The learned Advocate submits that the School Tribunal, however, while considering the aspect of delay has only considered the ground of illness of the father and grand father and has totally ignored the second ground that is of assurances given by the management. He submits that the order passed by the learned School Tribunal is without proper application of mind. He further submits that the petitioner was appointed in 2010, when the school was non-grant-in-aid. He further submits that the school started receiving grants pursuant to order passed by the Dy. Director (Education) Latur Division by order dated 24.01.2013. It is only after the school became grant-in-aid school, the petitioner is terminated and this aspect needs to be considered.

04. The learned Advocate for the respondents vehemently opposes the petition by submitting that no proper reason is assigned for condonation

of delay and no sufficient reason is shown. For some period the petitioner was working in ITI and this fact is not disputed. He cannot say that for entire period the petitioner was prevented from approaching the School Tribunal.

05. Considering the submissions, this Court has to see as to whether any ground is made out to condone the delay of 3 years and 11 months, as it is seen from record that only two grounds are taken which are already discussed. For the ground of health there is nothing to show that he was really prevented from approaching the School Tribunal. So far as second aspect is concerned of assurance given by the management, this cannot be said to be sufficient reason which prevented the petitioner from approaching the School Tribunal. Para 9 of the case of **N. Balakrishnan (Supra)** reads as under :-

“It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

06. From this itself it can be seen that to condone the delay is the matter of discretion. What need to be seen is that the cause for delay and explanation offered by the petitioner or a person seeking condonation of delay. It certainly requires satisfaction of the Court about explanation offered. In this Case, the this Court finds that there is no satisfactory reason coming from the petitioner. The reason assigned can hardly be said to be satisfactory reason. This Court finds that the learned School Tribunal did not commit any mistake in dismissing the application for condonation of delay.

07. Considering the above, this Court finds that no case is made out to call for interference with the order passed by the School Tribunal. The petition, therefore, stands dismissed with no order as to costs.

[KISHORE C. SANT, J.]